

OCT 25 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

JOHN HAMILTON STINSON) Civil Action No. 7:12CV00433
)
v.) SCHEDULING ORDER
)
ADVANCE AUTO PARTS, INC.) By: Samuel G. Wilson
) United States District Judge

The court proposes the following as the scheduling order pursuant to Federal Rule of Civil Procedure 16(b). If no party requests a change within 10 days, it will constitute the scheduling order in this case. The court may amend the order on its own motion or the parties may amend its disclosure and discovery provisions by submitting an agreed written plan that satisfies the requirements of Rule 26(f).

Summary

TRIAL DATE: July 16-18, 2013 JURY TRIAL

TIME: 9:00 a.m.

PLACE: UNITED STATES DISTRICT COURT
210 FRANKLIN ROAD
ROANOKE, VIRGINIA

PLAINTIFF (S) INITIAL EXPERT DISCLOSURE: 45 days from this order

DEFENDANT (S) INITIAL EXPERT DISCLOSURE: 30 days from Plaintiff's
Disclosure

DEADLINE TO COMPLETE DISCOVERY: 90 days before trial

DEADLINE FOR FILING RULE 56 MOTIONS: 75 days before trial date

DEADLINE FOR HEARINGS ON
RULE 56 MOTIONS: 45 days before trial date

Trial and Settlement

1. This case is set for a jury trial July 16-18, 2013.
2. Proposed jury instructions and special interrogatories must be submitted to the court at least 7 days prior to trial, with copies provided to opposing counsel.
3. Liability and damages will be bifurcated. The same jury will hear both.
4. Unless the case requires court approval of the settlement, if the case settles before trial the court will dismiss the case with prejudice retaining jurisdiction to enforce the settlement if any party so moves within 60 days of the entry of the dismissal order.

Motions

5. A supporting brief must accompany all pretrial motions, except unopposed motions and motions for continuance, unless the motion contains the legal argument necessary to support it. If a motion was filed before this order and legal argument did not support it, the movant must file a supporting brief within 14 days of the date of this order. If the motion is opposed, a brief in opposition must be filed within 14 days of the service of the movant's brief (or within 14 days of this order if a motion and supporting brief were served before this order). Except for good cause shown, if a brief opposing a motion is not timely filed, the court will consider the motion to be unopposed. If the moving party desires to submit a reply brief it must be filed within 7 days of the date of service of the brief opposing the motion.

6. If any party desires a hearing on a motion, the hearing may be scheduled with the court before or after the filing of the motion, but must be scheduled promptly following the filing of the last brief, or the court will consider the motion to be submitted for decision without hearing. In any event, if within 45 days of filing any dispositive or nondispositive pretrial motion, the moving party

has not brought the motion on for hearing or advised the court that the motion is ripe for decision, the motion will be deemed denied without further notice or order of this court, and the court will not entertain a renewed motion on the same issue except for good cause.

7. Motions for summary judgment must be filed no later than 75 days before trial and unless the parties agree otherwise, must be served at least 14 days before the time fixed for the hearing. Any response to the motion, including the brief in opposition, must be filed before the day of the hearing, or, in any event, no later than 14 days after service of the motion. Hearings on Rule 56 motions must be scheduled so that the hearing is at least 45 days before trial.

8. If a motion is unopposed and the moving party certifies such fact in the motion, no brief need be filed, nor response made to the motion. Nondispositive motions, including motions for enlargement of time, whether or not opposed, may be acted upon at any time by the court, without awaiting a response, and any party adversely affected by such action may request reconsideration, vacation or modification.

9. All nondispositive pretrial motions and issues, including any requested changes in this order are hereby referred to United States Magistrate Judge Robert S. Ballou, pursuant to 28 U.S.C. § 636(b)(1)(A).

10. In any event, as to any motion (whether dispositive or non-dispositive), the court may decide that oral argument would not aid in the decisional process and render a decision on the parties' submissions.

Discovery

11. Unless the parties stipulate otherwise, they must confer and develop a discovery plan as required by Rule 26(f) and make initial disclosures as required by Rule 26(a)(1).

12. All discovery must be completed at least 90 days before trial. This schedule requires that written discovery be served in sufficient time to allow the responding party time to respond before the cutoff date for discovery.

13. Except disclosures under Rule 26(a)(3) of trial witnesses and exhibits, which the parties **must** file, the parties are not to file discovery and disclosure material unless and until actually used in the proceeding.

Witnesses

14. Any expert witness must prepare a written report that conforms to the requirements of Rule 26(a)(2)(B). Unless the parties otherwise agree or the court otherwise directs, the plaintiff must submit the written report of each expert no later than 45 days from the date of this order, and defendant must submit the written report of each expert no later than 30 days from the date of plaintiff's disclosure. Supplemental and additional reports may be thereafter submitted, if submitted in a timely fashion so that discovery, if desired, can be completed reasonably by the discovery cutoff date without undue duplication and expense.

15. Any motion to exclude the testimony of an expert based on the sufficiency or reliability of the expert's testimony must be filed no later than the deadline for filing motions for summary judgment.

Mediation

16. At the request of any party at any time, the court will refer the case to the magistrate judge to conduct nonbinding mediation.

It is so **ORDERED**.

ENTER: October 24, 2012.



UNITED STATES DISTRICT JUDGE